IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 747

WASHINGTON, MARLBORO AND ANNAPOLIS MOTOR LINES, INC.,
Petitioner,

v.

LEON HENDERSON, Price Administrator, Office of Price Administration,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

JOHN P. DONOVAN,
Attorney for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable, the Chief Justice and
Associate Justices of the Supreme Court
of the United States:

The petitioner, Washington, Marlboro and Annapolis Motor Lines, Inc. respectfully submits this petition for a writ of certiorari, for the purpose of bringing before this Court for review a decision of the United States Court of Appeals for the District of Columbia, reversing a judgment of the District Court of the United States for the District of Columbia.

I.

On November 3, 1942, the respondent, Leon Henderson, as Price Administrator, Office of Price Administration, and by reason of the authority delegated to him by the Director of Economic Stabilization, by directive No. 1, issued and effective October 14, 1942, (7 Fed. Reg. 8758) filed in the District Court of the United States for the District of Columbia, an action against the petitioner for a temporary restraining order, and for a preliminary and permanent injunction, alleging that the petitioner was collecting a rate of fare from passengers riding on its buses operating between the District of Columbia and Seat Pleasant, Maryland, which was illegal, in that such fare was in excess of the fare which it had charged between such points on September 15, 1942, and as the President or his designated agent, had not been given thirty days notice of the petitioner's intention to increase such fare as required by an Act of Congress, approved October 2, 1942, and known as "An Act to Amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes". (Pub. L. No. 729, Ch. 578, 77th Cong., 2nd Sess.) R. 1.

On the same day, the District Court of the United States for the District of Columbia issued a temporary restraining order against the petitioner, without notice to it. R. 12.

The petitioner filed its answer to the complaint on November 9, 1942, R. 14, and there being no dispute as to the facts, final hearing was had on the complaint and answer in the matter, before the District Court of the United States on November 17, 1942. A finding was made by the Court, dismissing the complaint of the respondent. Thereafter, on November 19, 1942, the court entered its findings of fact and conclusion of law and entered a judgment vacating the temporary restraining order and dismissing the complaint. R. 21 to 23 inc.

The respondent immediately gave notice of appeal and on November 20, 1942, the matter was set for hearing on

November 23, 1942, before the United States Court of Appeals for the District of Columbia. The decision of that Court was handed down on December 4, 1942, reversing the District Court. R. 28.

It is to the judgment of the Court of Appeals reversing the District Court for dismissing the complaint of the plaintiff that this petition is directed.

II.

Jurisdiction.

The judgment reversing the District Court of the United States was entered in the United States Court of Appeals for the District of Columbia on December 4, 1942. R. 35. The jurisdiction of this Court is invoked under Section 240a of the Judicial Code of the United States, as amended by the Act of February 13, 1925, (28 U. S. C. A. Section 347a).

III.

Statement of Facts.

The petitioner, Washington, Marlboro and Annapolis Motor Lines, Inc., is a common carrier and is the owner and operator of a passenger motor bus service operating intrastate in the State of Maryland and in the District of Columbia, and interstate between said State and District, and has been so engaged since 1922.

The operations of the petitioner are over routes fixed and established by the Public Utilities Commission of the District of Columbia and the Public Service Commission for the State of Maryland, at rates of intrastate fare authorized by said commissions within their respective jurisdictions, and at interstate rates of fare authorized by the Interstate Commerce Commission.

All of the interstate operations of the petitioner are within the Metropolitan area of the District of Columbia, and with the exception of the North Beach service, all of the Maryland points to which the buses of the petitioner operate are situated within Prince Georges County.

From a terminal in the District of Columbia located at 11th and Pennsylvania Avenue, Northwest, the buses of the petitioner operate interstate to four points, i. e., Silver Hill, Maryland, 8 miles from the terminal; Suitland, Maryland, 7 miles from the terminal; Forestville, Maryland, 10 miles from the terminal, and Seat Pleasant, Maryland, 9½ miles from the District of Columbia, R. 18a.

The authorized rate of interstate fare on September 15, 1942, for passengers on the petitioner's buses, who were riding between Silver Hill, Maryland, and the District of Columbia, was fifteen cents (15¢); for those passengers riding between Suitland, Maryland, and the District of Columbia, fifteen cents (15¢); for passengers riding between Forestville, Maryland, and the District of Columbia, fifteen cents (15¢), and for those between Seat Pleasant, Maryland, and the District of Columbia, ten cents (10¢). Passengers riding intrastate in the District of Columbia on all of the buses of the petitioner paid the rate of fare authorized by the Public Utilities Commission of the District of Columbia of ten cents (10¢), and passengers riding intrastate on any of said buses within the State of Maryland paid a fare of five cents (5¢) as authorized by the Public Service Commission of that State. R. 17.

The rates of fare charged by the petitioner on September 15, 1942, for the same quality or class of service, were uniform in every particular, except for the rate of interstate fare which was charged for passage between the District of Columbia, and Seat Pleasant, Maryland.

On September 23, 1942 the petitioner, acting in accordance with the appropriate provisions of the Interstate Commerce Act, Part II (49 Stat. L. 543, 54 Stat. L. 919) and certain related regulations of the Interstate Commerce Commission then in force "*To Govern the Construction and Filing of Common Carrier Passenger Fare Applications*" and for other matters, as set forth in Tariff Circular M. P. No. 3, proposed and filed with that Commission, a new passenger tariff or rate of fare to become effective on October 25, 1942, increasing one way interstate fares between Seat

Pleasant, Maryland, and the District of Columbia, from ten cents (10¢) to fifteen cents (15¢) R. 19, thereby making uniform and non-discriminatory the fares on all of the buses of the petitioner, and also making the interstate rate of fare between Seat Pleasant, Maryland, and the District of Columbia, equal to the combined authorized intrastate fares between these points. No increase was proposed or sought for the intrastate rates of fare in effect on that date.

On October 25, 1942, at 12:01 a. m., pursuant to the schedule of tariffs filed with the Interstate Commerce Commission, and in compliance with Rule 5 of Tariff Circular M. P. No. 3, the rate of fare from the District of Columbia to Seat Pleasant, Maryland, was raised from ten cents (10¢) to fifteen cents (15¢). R. 14.

The number of passengers affected by the rate increase of October 25, 1942, totaled about 2300 daily. The petitioner carried on all of its buses approximately 13,000 passengers daily, and on the buses operating between the District of Columbia (11th and Penna. Ave., N. W.) and Seat Pleasant, Maryland, carried approximately 7,700 passengers daily.

IV.

Questions Presented.

1. Was the increase in passenger fare for passengers riding interstate between the District of Columbia and Seat Pleasant, Maryland, and other points on the route, a *general increase* within the meaning of the Act of October 2, 1942, (Public Law No. 729, 77th Congress, 2nd Session) providing that no common carrier or Public Utility shall make any *general increase* in its rates or charges which were in effect on September 15, 1942, unless it first gives 30 days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State or Municipal authority having jurisdiction to consider such increase?

2. Was the petitioner required to first give notice to the President, or such agency as he designated, before putting

the increased rates into effect on October 25, 1942, where the schedule of such rates had been filed with the Interstate Commerce Commission on September 23, 1942, nine days prior to the passage of said Act, and pursuant to the appropriate provisions of the Interstate Commerce Act Part II (49 Stat. L. 543, 54 Stat. L. 919) and certain regulations of the Interstate Commerce Commission then in force "To govern the construction and filing of common carrier passenger fare applications (Tariff Circular M. P. No. 3).

3. Is the Act of October 2, 1942, retroactive?

V.

Assignment of Errors and Reason for Granting the Writ.

The court below erred

1. In holding that the rate increase put into effect by the petitioner was a "general increase" within the meaning of the Act of October 2, 1942.

2. In holding that the petitioner was required to give 30 days notice to the President or his designated agent, and consent to timely intervention, where the tariff schedule for the rate increase put into effect by the petitioner on October 25, 1942, had been filed with the Interstate Commerce Commission and posted in the form and manner prescribed by law on September 23, 1942, nine days before the passage and approval of the Act of October 2, 1942.

3. In holding that the rate increase of the petitioner was not made when it was filed and posted in accordance with law on September 23, 1942, but was made within the meaning of the Act of October 2, 1942, when it became effective on October 25, 1942.

4. In holding that the Act of October 2, 1942 superseded the Interstate Commerce Act.

5. In holding that the increase in rates of the petitioner, which were made and became effective under the provisions

of the Interstate Commerce Act, and related regulations, are unlawful.

6. The questions herein involved deal with two federal laws, namely, the Interstate Commerce Act and the Act of October 2, 1942, amending the Emergency Price Control Act, and the effect of the latter on the rate making provisions of the former and the rules and procedure adopted by the Interstate Commerce Commission with respect thereto. The United States Court of Appeals for the District of Columbia has decided an important question of Federal law, which has not been, but should be passed upon by this court, since one of the questions presented relates to all cases of common carriers or public utilities who made and put into effect a general increase in their rates after September 15, 1942, and prior to the passage of the Act of October 2, 1942, without giving notice in accordance with said Act.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court in the case entitled "Leon Henderson, Price Administrator, Office of Price Administration, Appellant v. Washington, Marlboro and Annapolis Motor Lines, Inc., Appellee," to the end that the cause may be reviewed and determined by this Court in the manner provided by law; and your petitioner prays that the judgment of the United States Court of Appeals for the District of Columbia be reversed.

WASHINGTON, MARLBORO AND ANNAPOLIS MOTOR LINES, INC.,

By LESLIE L. ALTMANN,
President.